

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., for a)
certificate of public good, pursuant to 30 V.S.A.)
§ 248 , authorizing the construction of the)
“Addison Natural Gas Project” consisting of)
approximately 43 miles of new natural gas) Docket No. 7970 (on remand)
transmission pipeline in Chittenden and)
Addison Counties, approximately 5 miles of)
new distribution mainlines in Addison County,)
together with three new gate stations in)
Williston, New Haven and Middlebury,)
Vermont)

POST-HEARING MEMORANDUM OF KRISTIN LYONS

Ms. Lyons agrees with and supports the Post-Hearing Memorandum submitted by AARP. However, Ms. Lyons wishes to address in greater depth what distinguishes the decision now before the Board from the decision that was before the Board in *Re: Vermont Electric Power Company, Inc.*, Docket 6860, Order 9/23/05.

1. The state of the evidence

The hearing held by the Board on September 26, 2014, was constructive. Thanks in large part to the careful questioning of Vermont Gas System, Inc.’s (VGS) witnesses by the Board and its staff, the present state of knowledge about the cost of the project has been greatly clarified.

A. *\$35 million may be the tip of the iceberg in new costs.* The recently revealed \$35 million cost increase may be the forerunner of a series of cost increases, because that figure was developed by a project management team that VGS itself has dismissed because it lacks the skills and experience necessary to manage and predict the costs of the project. VGS’ new team, using industry-standard cost assessment and control, has yet to prepare a new budget for the project. See AARP Memorandum at pages 2-

- 3.
- B. *\$48.8 million in added carrying-costs would be borne by existing ratepayers because of the cost increase.* This cost increase will add \$48.8 million to the carrying-costs that will be paid by existing ratepayers to fund this project over the first 20 years of the project. See AARP Memorandum at page 7.
- C. *There would be a \$150 to \$270 million in carrying-costs paid by existing ratepayers to fund the project.* Overall, the project would cause at least an additional \$150 million to be placed in the rates that will be paid by existing ratepayers over the next ten years, and over the next 32 years would cause at least an additional \$270 million to be paid by existing ratepayers. Only after 32 years have passed and \$270 million has been paid would existing ratepayers (assuming they have not deceased or moved out of the service territory) begin to reap the financial benefit of having the new service territory contribute to shared overhead. See AARP Memorandum at pages 4-6.
- D. *This cost would pay for service to 3,000 new customers.* These contributions to carrying-cost by existing ratepayers will allow service to be provided to only 3,000 new customers -- resulting in carrying-cost of \$50,000 per new customer over the next ten years and \$90,000 per new customer over the next 32 years. See AARP Memorandum at page 9.
- E. *Expending \$150 million to \$270 million in order to save \$195 million in heating costs, when the same savings can be achieved by spending zero in existing ratepayer funds would be imprudent, unjust and unnecessary.* VGS argues that this \$150 million to \$270 million expenditure of existing ratepayer funds will result in \$195 million in

fuel savings for Addison County residents -- i.e., compelling existing ratepayers to pay \$50,000 to \$90,000 per average new customer so that the new average customer can save \$65,000 in heating costs. This seems imprudent and unjust on its face, but VGS' analysis of even the purported new-customer savings also no longer is credible. Mr. Neme explained that existing electric service can achieve the same or greater heating expense savings by installation of heat pumps, at the same cost to the consumer as converting to natural gas, *without any investment by existing ratepayers*. Only if the use of heat pumps for air conditioning causes an increased need for summertime capacity is there likely to be an effect on the electric transmission grid and thereby increase electric rates. This is unlikely because these heat exchangers are more efficient than the air conditioners they would replace. Neme prefiled testimony; 9/26/14 Tr. 200-239, esp.208-211, 221-222.

F. *Rates would rise by 15.2%*. The project now will necessitate a 15.2% rate hike for existing ratepayers, in order to add service to 3,000 customers. See AARP Memorandum at page 4.

In the face of this evidence, Mr. Gilbert's prefiled testimony argues the project should remain immune from reexamination because it remains "very valuable to the state." The project is very valuable to the state because it is a "once-in-a-generation opportunity... to extend natural gas infrastructure to Addison and Rutland Counties, with a longterm goal of interconnecting the VGS system with the United States interstate pipeline system" and thereby providing heating cost savings, greenhouse gas savings and economic development benefits to residents of the state. (Page 5, lines 6 through 11.) In his live testimony, Mr. Gilbert continued to press these arguments. See pages 100, 114, 116, 130, 141, and 142 of the 9/26/14 transcript.

VGS also relies on projections of cost that assume construction of Phase 2, which would result in smaller impacts on ratepayers from the currently projected cost increase. But Phase 2 depends on three variables, only one of which lies within the control of the Board. The first is approval under § 248. The second is obtaining necessary property rights in Vermont, where property owners will be able to argue that the taking of private property to construct a gas pipeline the primary purpose of which is to serve International Paper Company would violate the Fifth and Fourteenth Amendments under *Kelo v. City of New London*, 545 U.S. 469, 490-493 125 S.Ct. 2655, 162 L.Ed. 2d 439 (2005) (Kennedy, J. concurring) (eminent domain unconstitutional where primary purpose would be to serve a private interest and public benefit is incidental). The third is the necessity of obtaining a final ruling from the courts of New York that use of the lake bed of Lake Champlain for a pipeline to serve a private user, International Paper Company, is allowed by Article XIV of the New York Constitution. *See Adirondack Mountain Club v. APA*, 33 M.3d 383 (Sup. Ct. Albany Co.2011)(Low's Lake lakebed is Forest Preserve); *Op. of the Attorney General No. 96-F2* (finding that State land under Raquette Lake and Big Moose Lake is part of the Forest Preserve). Private facilities such as power lines for private use are not permitted on the Forest Preserve, including the beds of lakes. *Op. of the Attorney General No. 96-F2, supra. See Slutzky v. Cuomo*, 128 M.2d 365, 367-368 (Sup. Ct. Albany Co. 1985), aff'd 114 A.D.2d 116 (3d Dept. 1986); *People v. Baldwin*, 113 M. 172, 176 (Sup. Ct. Hamilton Co. 1920); *Saranac Land & Timber Co. v. Roberts*, 195 N.Y. 303, 319-323 (1909); *People ex rel. Turner*, 18 Bedell at 2627. *See also* 6 NYCRR § 190.8(a)(DEC regulation which prohibits "...the use of State lands or any structures or improvements thereon for private revenue or commercial purposes...").

2. How the Board should resolve these conflicts in the evidence

This case presents a stark contrast to Docket 6860. There, the Board held that even if each of the factual contentions of the moving parties turned out to be correct, that would not change the decision the Board had made. The cost of the Northwest Reliability Project may well have greatly increased, ruled the Board, but the Board's earlier ruling "did not approve the NRP on the basis that it was the lowest-cost option that we reviewed." *In re Vermont Electric Company, Inc., supra* at 11. The Board had found in its earlier decision that one alternative would cost less than the NRP but the Board had approved the NRP anyway because no other alternative "can meet the expected need for service with an appropriate level of reliability in a timely manner." The parties seeking a reopened hearing had "not identified any way in which the increased costs of the NRP would change the non-cost barriers to timely implementation of the alternatives." *Ibid.* Because the new information pertained solely to cost, and because cost had not been the deciding factor in the earlier decision, there was no need to reopen the proceedings to evaluate whether the project continued to satisfy the standards of § 248. The parties seeking reopening had "failed to meet their burden under Rule 60(b)(2) of showing that reopening would likely change the outcome of our proceeding. *Ibid.*

Here, the new evidence of cost from VGS itself, and the new evidence about alternative means of obtaining some of the principal benefits of the project without the costs of the project, challenge the basis upon which the project was approved. Findings 229-230 and the Conclusions on pp.72-79, Findings 308-310 and 323-328 and the Conclusions on pp.101-103, and Findings 502, 507, 513, 518, 520 and the Conclusions on pp.135-145 no longer are correct – if Mr. Neme's testimony is accepted over that of Mr. Gilbert and Ms. Simollardes. Heat pumps would be the least cost alternative under § 248(b)(2). Heat pumps would sharply reduce greenhouse gas

production under § 248(b)(5). And heat pumps would better promote the orderly development of the region under §248(b)(1) and the general good of the state under § 248(a) because fuel savings and greenhouse gas reductions can be achieved without the large financial costs, cross-subsidies, environmental impacts and social costs of constructing 43 miles of transmission pipeline, and also without the disruption of landowners' expectations and rights to the continued use and enjoyment of their property.

The Board's conclusions on pages 142-144 about the likely time period over which existing ratepayers would be subsidizing the carrying costs of a project also are no longer correct. This determination requires no weighing of competing witnesses. The exhibits and testimony submitted by VGS and its data response on September 29 demonstrate that the Board was given inaccurate and incomplete information in 2013 which it then relied upon. These errors undermine the Board's findings and conclusion about the general good of the state under § 248(a) and whether the project is the least-cost alternative under § 248(b)(2). A project that would impose \$270 million in carrying costs on existing ratepayers over 32 years, in order to provide gas service to 3000 new customers, does not serve the general good of the state. Such a project cannot be justified as the least-cost alternative or as promoting the general good where similar benefits can be obtained by an alternative that requires no subsidy and no new transmission infrastructure.

Mr. Gilbert and Ms. Simollardes may or may not be correct that the goal of expanding service to Rutland, and the fuel savings and greenhouse gas reductions that may arise from widened availability of natural gas, outweigh the financial cost of the project. (Ms. Lyons disagrees with each of their contentions.) But Mr. Gilbert and Ms. Simollardes are clearly incorrect in arguing that the Board should "not reopen the record in this docket" (Gilbert prefiled

testimony, page 8, line 20) in order to avoid making that determination.

Evaluation of whether Mr. Gilbert is correct or Mr. Neme is correct about the fuel savings and greenhouse gas savings of the project, and the weighing of the benefits of the project against its increased, enormous cost, cannot be performed on the basis of the current record. The purpose of the hearing held on September 26 was not to decide those issues. It was to decide whether to hold a later hearing in order to address those issues. Given that the project will cost at least \$35 million more to construct, that the increased construction costs will result in at least \$48.8 million in increased carrying costs borne by existing ratepayers, that the Board has been presented with substantial credible new evidence that alternatives to the project would provide similar heating cost savings and greenhouse gas reductions but without any of the economic, social and environmental costs of constructing the project, and that the Board has held that potential benefits of Phase 2 or Phase 3 cannot be relied upon to justify Phase 1, the policies of § 248 and the purpose of Rule 60(b) dictate that the Board now schedule a hearing to address these issues on their merits.

Conclusion

Ms. Lyons asks that the Board order VGS to provide a cost estimate that has been prepared by experts other than Clough Harbor and Associates, schedule a hearing, and allow for expedited discovery, on whether the Certificate of Public Good in this matter should be withdrawn or maintained.

Dated at Bristol, Vermont, this 2nd day of October, 2014.

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